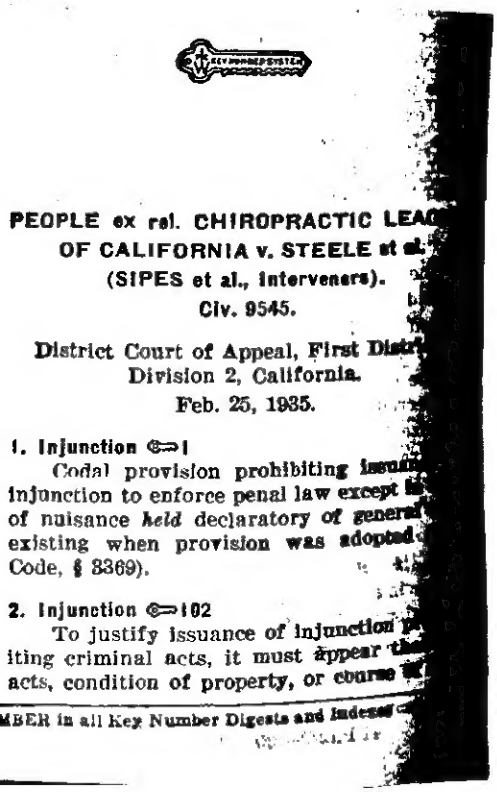

PEOPLE ex rel. CHIROPRACTIC LEA
OF CALIFORNIA v. STEELE et al.
(SIPES et al., Interveners).
Civ. 9545.

District Court of Appeal, First Distr
Division 2, California.
Feb. 25, 1935.

1. Injunction ⇐1

Codal provision prohibiting issuan injunction to enforce penal law except in of nuisance *held* declaratory of general existing when provision was adopted Code, § 3369).

2. Injunction ⇐102

To justify issuance of injunction pr iting criminal acts, it must appear tha acts, condition of property, or course

MBER in all Key Number Digests and Indexes

duct complained of falls within definition of nuisance (Civ. Code, § 3369).

3. Constitutional law ⇐70(3)

Whether remedy by injunction is necessary to enforcement of acts governing practice of healing arts rests with Legislature, and not with the courts (Civ. Code, § 3369).

Appeal from Superior Court, Santa Clara County; Wm. F. James, Judge.

On petition for rehearing.

Rehearing denied.

Prior opinion, 40 P.(2d) 959.

J. H. McKnight, of Oakland, and Edward A. Stuart, of Los Angeles, for appellants.

Thomas Morris, of Los Angeles, amicus curiæ.

U. S. Webb, Atty. Gen., Leon French, Deputy Atty. Gen., and Frank V. Kington, of San Francisco, for respondent.

PER CURIAM.

[1] In the petition for rehearing filed herein respondent urges that section 3369 of the Civil Code cannot be construed so as to limit the inherent power of the superior courts to grant injunctions. The section however, in so far as it prohibits the issuance of an injunction to enforce a penal law except in a case of nuisance, is merely the codification of a general rule already existing at the time the section was adopted. The section was originally taken from Field's draft of the New York Civil Code, § 1883. In the Report of the Commissioners found at p. VII of Field's draft, it is said: "All the Commissioners profess is that they have endeavored to collect those general rules known to our law which are applicable to our present circumstances and ought to be continued." In the Code Commissioners' note appended to the section as originally drafted is cited in support of the provision here in question Mayor of City of Hudson v. Thorne, 7 Paige (N. Y.) 261, in which the chancellor said: "It is no part of the business of this court to enforce the penal laws of the state, or the by-laws of a corporation, by injunction, unless the act sought to be restrained is a nuisance." That this is the law now as it was then in a majority of the jurisdictions of this country including California we believe the citations in our opinion originally filed herein established. That apparently was the view of section 3369 of the Civil Code taken by our Supreme Court in Perrin v. Mountain View Mausoleum Ass'n, 206 Cal. 669, 275 P. 787. In that case the court said at page 671 of 206 Cal., 275 P. 787, after quoting the section: "This statutory enactment is but the expression of the fundamental rule that courts of equity are not concerned with criminal matters and they cannot be resorted to for the prevention of criminal acts, except where property rights are involved."

[2] Respondent further contends that injunction may be resorted to in cases closely analogous to nuisance and in cases violative of public policy. This contention and the further contention of respondent that the continued violation of a statute constitutes in itself a public nuisance is fully discussed in People v. Seccombe, 103 Cal. App. 306, at pages 312-314, 284 P. 725, 728. The court there announced the conclusion that in order to justify the issuance of an injunction prohibiting criminal acts "it must appear that the acts, condition of property, or course of conduct complained of fall within the definition of a nuisance as laid down by our laws. * * *" We feel that we can add nothing to the analysis of the cases in support of that conclusion contained in the opinion on that case.

People v. Barbiere, 33 Cal. App. 770, 166 P. 812, and State v. Fanning, 96 Neb. 123, 147 N. W. 215, are distinguishable from this case on the ground that in them the courts were passing upon statutes which specifically declared places conducted in violation of those statutes to be public nuisances, and provided for their abatement. Such cases as Dworken v. Apartment House Owners' Ass'n, 38 Ohio App. 265, 176 N. E. 577; Unger v. Landlords' Management Corp., 114 N. J. Eq. 68, 168 A. 229; and Sloan v. Mitchell, 113 W. Va. 506, 168 S. E. 800, proceeded on a theory foreign to this action. In those cases, holders of licenses to practice a profession were allowed to enjoin unlicensed defendants from practicing the same profession in competition with them. The cases are not in point on the question of the right of the state to enjoin such unlicensed practice.

[3] Respondent urges the claimed disastrous consequences of our decision. It is sufficient to point out that if the Legislature had deemed the remedy by injunction necessary to the enforcement of the acts governing the practice of healing arts it would have been an easy matter to provide therefor by statute.

The petition for rehearing is denied.